

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

Paper No. 23

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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Ex parte PETER R. SMITH AND RICHARD ZANOTTI

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Appeal No. 2000-2006  
Application No. 09/027,173

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ON BRIEF

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Before ABRAMS, FRANKFORT, and STAAB, Administrative Patent Judges.

FRANKFORT, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection of claims 1 through 7 and 14, the only claims remaining in this application. Claims 8 through 13 and 15

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have been canceled.

Appellants' invention relates to a tarpaulin comprising a sheet of canvas or synthetic resin material, reinforcing webbing applied to an outer surface of the sheet, a retroreflective sheeting incorporated onto the reinforcing webbing, and a plurality of non-elastic straps joined to the retroreflective sheeting for attaching to a perimeter of a vehicle. Independent claim 1 is representative of the subject matter on appeal and a copy of that claim can be found in the Appendix to appellants' brief.

The prior art references of record relied upon by the examiner in rejecting the appealed claims are:

Hansen	5,050,924	Sep. 24,
1991		
Jones	5,388,702	Feb. 14,
1995		
Tolliver et al.	5,491,021	Feb. 13,
1996		
(Tolliver)		
Martin et al. (Martin)	5,637,173	Jun. 10,

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1997

Claims 1, 7 and 14 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Hansen in view of Tolliver and Jones.

Claims 2, 5 and 6 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over "Hansen, as twice modified, in view of Martin."

Claims 3 and 4 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over "Hansen, as thrice modified, as applied to claim 2 above, and further in view of obvious common knowledge."

Rather than reiterate the examiner's full statement of the above-noted rejections and the conflicting viewpoints advanced by the examiner and appellant regarding the rejections, we make reference to the examiner's answer (Paper No. 20, mailed March 23, 2000) for the examiner's reasoning in

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support of the rejections, and to appellants' brief (Paper No. 19, filed February 22, 2000) for the arguments thereagainst.

#### OPINION

In reaching our decision in this appeal, we have given careful consideration to appellants' specification and claims, to the applied prior art references, and to the respective positions articulated by appellants and the examiner. As a consequence of our review, we have made the determinations which follow.

Independent claim 1 defines appellants' invention as being a tarpaulin comprising a sheet (e.g., of canvas or synthetic resin material), a reinforcing webbing applied to the outer side of the sheet, a retroreflective sheeting "incorporated onto the reinforcing webbing," and a plurality of non-elastic straps "joined to said retroreflective sheeting on said outer side" for attaching to a perimeter of a vehicle.

According to the examiner (answer, page 3), Hansen

discloses a tarpaulin including a sheet (2), a plurality of elastic straps or cords (e.g., 4) and a reinforcing webbing (3) which extends around the perimeter of the sheet. In addition, Hansen discloses (col. 7, line 62 - col. 8, line 12) the use of safety reflective means secured to the tarp, for example, on one or more of the coverings (11), to increase the visibility of the tarpaulin at night or in low visibility conditions such as inclement weather. In the examiner's view, the tarpaulin of Hansen does not incorporate a retroreflective sheeting onto the reinforcing

webbing or provide a teaching that the sheet can be attached to the vehicle with non-elastic straps and buckles.

To account for these differences between the tarpaulin of Hansen and the claimed subject matter, the examiner turns to the teachings of Tolliver and Jones. The examiner sees in Tolliver a teaching of a tarpaulin or truck trailer cover which has a retroreflective sheeting (46) incorporated onto a perimeter of a sheet (40), and in Jones a teaching of a tarpaulin sheeting employing non-elastic straps (20, 30, 40)

secured using a buckle system (41, 42). From these teachings, the examiner has concluded that it would have been obvious to one of ordinary skill in the art to employ a retroreflective sheeting incorporated onto the webbing located on the perimeter of the sheet in Hansen, as taught in Tolliver, for a better safety measure and to employ non-elastic straps with buckles instead of the elastic straps of Hansen, as taught in Jones, to allow for more secure attachment of the tarpaulin to the vehicle.

Having reviewed and evaluated the applied references, we must agree with appellants that, even if combined in the manner set forth by the examiner, the applied references would not render obvious the tarpaulin defined in claim 1 on appeal. In the first place, given the strong emphasis in Hansen regarding the use of "elasticized" reinforcing and tie down straps or cords (4, 10) and the problems solved by such elasticized members, we see no reason why a person of ordinary skill in the art would have been led to replace the elasticized straps or cords in Hansen with non-elastic straps as seen in Jones, especially since Hansen already additionally

provides for what are apparently non-elastic load securing ropes (14) to allow for more secure attachment of the tarpaulin to the vehicle. In addition, we share appellants' view that the applied references do not teach or suggest a tarpaulin having the particular multi-layered construction set forth in claim 1, wherein the tarpaulin main sheet has reinforcing webbing applied to an outer side thereof, a retroreflective sheeting "incorporated onto the reinforcing webbing," and a plurality of non-elastic straps "joined to said retroreflective sheeting on said outer side" for attaching to a perimeter of a vehicle. More particularly, there is no teaching or suggestion in any of the three references applied by the examiner of a multi-layer construction wherein non-elastic straps are joined to a retroreflective sheeting on the outer side of a tarpaulin as required in the claims on appeal and as generally seen in Figure 5 of the application.

Since it is our determination that the teachings and suggestions found in Hansen, Tolliver and Jones would not have

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made the subject matter as a whole of independent claim 1 on appeal obvious to one of ordinary skill in the art at the time of appellants' invention, we must refuse to sustain the examiner's rejection of that claim under 35 U.S.C. § 103(a). It follows that the examiner's rejection of dependent claims 7 and 14 under 35 U.S.C. § 103(a) based on Hansen, Tolliver and Jones will also not be sustained.

We have also reviewed the patent to Martin and the examiner's assertion of "obvious common knowledge" applied against dependent claims 2 through 6 on appeal under 35 U.S.C. § 103(a). However, we find nothing in Martin or in the "obvious common knowledge" urged by the examiner which provides for or renders obvious the particular multi-layered construction set forth in claim 1 on appeal which we have already found to be lacking in the basic combination of Hansen, Tolliver and Jones. Thus, the examiner's rejection of dependent claims 2, 5 and 6, and the rejection of claims 3 and 4 under 35 U.S.C. § 103(a) will likewise not be sustained.

In light of the foregoing, the decision of the examiner



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to reject claims 1 through 7 and 14 under 35 U.S.C. § 103(a)  
is reversed.

REVERSED

NEAL E. ABRAMS	)	
Administrative Patent Judge	)	
	)	
	)	BOARD OF PATENT
	)	
CHARLES E. FRANKFORT	)	APPEALS AND
Administrative Patent Judge	)	
	)	INTERFERENCES
	)	
	)	
LAWRENCE J. STAAB	)	
Administrative Patent Judge	)	

CEF:lbg

HAMILTON, BROOK, SMITH & REYNOLDS, P.C.  
TWO MILITIA DRIVE  
LEXINGTON, MA 02421